

Broadcasting Board of Governors

§ 504.5

(g) Request means any informal request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court or other competent authority.

(h) Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Demands or Requests for Testimony and Production of Documents

§ 504.4 General prohibition.

(a) In any United States federal, state, and local proceeding or administrative action, or proceeding or administrative action conducted in a foreign country, in which the BBG is not a party, no BBG employee shall, in response to a demand or request for official records or information, furnish or produce documents or testimony as to any material contained in BBG files, any information relating to or based upon material contained in BBG files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior written approval of the General Counsel.

(b) Whenever a request or demand for information is made upon a BBG employee, the employee, wherever located, shall immediately prepare a report that specifically describes the testimony or documents sought and immediately notify the General Counsel. The BBG employee shall then await instructions from the General Counsel concerning a response to the request or demand. The failure of any BBG employee to follow the procedures specified in this subpart neither creates nor confers any rights, privileges, or benefits on any person or party.

§ 504.5 Factors the BBG will consider.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in re-

sponse to a demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(c) Allowing such testimony or production of records would assist or hinder the BBG in performing its statutory duties;

(d) Allowing such testimony or production of records would be in the best interest of the BBG or the United States;

(e) The records or testimony can be obtained from other sources;

(f) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(g) Disclosure would violate a statute, Executive Order or regulation;

(h) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;

(i) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(j) Disclosure would result in the BBG appearing to favor one litigant over another;

(k) The request was served before the demand;

(l) A substantial Government interest is implicated;

(m) The demand or request is within the authority of the party making it; and

(n) The demand or request is sufficiently specific to be answered and/or can be limited to information to that which would be consistent with the factors specified herein.